S E R V E D
April 8, 2015
FEDERAL MARITIME COMMISSION

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DOCKET NO. 1945(F)

OKOYE CHRISTIAN OGOCHUKWU

v.

EMEKA ONYECHI d/b/a DONEM INTERNATIONAL, LLC

INITIAL DECISION APPROVING SETTLEMENT AND DISMISSING WITH PREJUDICE[1]

I. SUMMARY.

On July 8, 2014, the Commission received a *pro se* Complaint filed by complainant Okoye Christian Ogochukwu (Ogochukwu). The Secretary docketed this filing as an informal complaint pursuant to 46 C.F.R. Subpart S. Respondent Emeka Onyechi d/b/a Donem International, LLC (Respondent), also *pro se*, objected to proceeding informally and on October 15, 2014, the Secretary referred this proceeding to the Office of Administrative Law Judges. Therefore, the claim is considered to be a formal complaint under 46 C.F.R. § 502.311 to be adjudicated pursuant to 46 C.F.R. Subpart T.

The undersigned issued two orders asking the parties to supplement the record by responding to questions and submitting documents. *Okoye Christian Ogochukwu v. Emeka Onyechi d/b/a Donem International, LLC*, FMC No. 1945(F) (ALJ Oct. 23, 2014) (Initial Order); *Okoye Christian Ogochukwu v. Emeka Onyechi d/b/a Donem International, LLC*, FMC No. 1945(F) (ALJ Feb. 4, 2015) (Second Order to Supplement the Record). The parties responded to both orders. On March 12, 2015, the parties appeared for a telephone status conference to discuss the state of the record and whether an oral hearing and submission of written arguments would be required. Both parties were placed under oath for factual assertions stated in the conference. An audio recording of the conference was made and sent to the parties, but no transcript was created.

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[1] This Initial Decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.227.

On March 17, 2015, Complainant sent an email to the Office of Administrative Law Judges stating that "that after further deliberation following our conference call with the Judge, myself and Mr. Emeka Onyechi [have] reached a settlement. Further details about the settlement will be made available via email later." (Email dated March 17, 2015, from Christian Okeye to judges@fmc.gov.)

On March 20, 2015, I appointed the Honorable Erin M. Wirth, Administrative Law Judge, Federal Maritime Commission, as settlement judge in this proceeding, 46 C.F.R. § 502.91(f), and advised the parties that Judge Wirth would be available to assist the parties in reducing their agreement to writing. *Okoye Christian Ogochukwu v. Emeka Onyechi d/b/a Donem International, LLC*, FMC No. 1945(F) (ALJ Mar. 20, 2015) (Order Appointing Settlement Judge). Judge Wirth met with the parties by telephone on March 24, 2015.

On April 8, 2015, the parties filed a Settlement Notice with the Secretary. This Initial Decision approves the parties' settlement.

II. BACKGROUND.

The Complaint contends that Respondent violated section 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. § 41102(c), when Ogochukwu paid $1,330.00 to Respondent allegedly to transport medical equipment by water to Nigeria, but Respondent did not transport the equipment. (Complaint ¶¶ III and IV.) Respondent, which is certified by the Transportation Security Administration (TSA) to operate as an indirect air carrier,[2] alleges that it had an "initial agreement" with Ogochukwu's representative Mr. Obioma Ukegbu to pick up the equipment and send it to Nigeria by air freight (Answer at 1),[3] but did not enter into an agreement with Ogochukwu to transport the equipment by water. (Answer at 3.) In a portion of its Answer arguably treated as a counterclaim, Respondent claims Complainant owes it fees for storing the equipment in New Jersey and in Nigeria. Respondent argues that since it is not licensed by the Commission, the Commission does not have jurisdiction over this proceeding. (Answer at 5-6.)

The sworn statements and documents submitted by the parties suggest that the following events occurred. In a GSA auction, Complainant, who is located in California, purchased nine pieces of surplus medical equipment from a VA hospital in New Jersey. The purchase price was $3027. A GSA Purchaser's Receipt is necessary to pick up the equipment. A friend of Complainant emailed

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[2] "*Indirect air carrier* (IAC) means any person or entity within the United States not in possession of an FAA air carrier operating certificate, that undertakes to engage indirectly in air transportation of property, and uses for all or any part of such transportation the services of an air carrier." 49 C.F.R. § 1540.5.

[3] Respondent submitted a six-page response that begins with a section entitled "The Real ISSUE" [*sic*] (Answer at 1), continues with a "Response in Opposition" to the Complaint (Answer at 2-4), and concludes with a "Motion to Dismiss the Complaint." (Answer at 4-5.) For convenience I call this response an Answer.

the receipt to Respondent with the intention that Respondent would transport the equipment of Nigeria by air freight. Respondent stored the equipment in its facility in New Jersey. As a result of discussions, the content of which the parties dispute, at some point in this period, Complainant deposited $1,330.00 in Respondent's bank account. Complainant's friend also purchased four of the nine pieces from Complainant for $1,345.33, four-ninths of the original purchase price.

Transportation by air proved to be more expensive than anticipated. Five months after Respondent picked up the equipment, Respondent arranged for a common carrier by water to pick up the equipment and the equipment was transported to Nigeria by water. Although neither Complainant nor Respondent has copies of the documents issued by the carrier to substantiate this, apparently Complainant's friend was identified as the shipper. A document submitted by Respondent supports its contention that Respondent paid the $1,330.00 received from Complainant to the carrier. In the telephone conference, Complainant stated that he personally did not pay any money directly to the carrier for the transportation by water. When the equipment arrived in Nigeria, it was delivered to Respondent's storage facility. Complainant's friend picked up his four pieces of equipment. Respondent has held Complainant's five pieces in his facility, wanting Complainant to pay fees claimed due for storing the equipment for five months in New Jersey and for approximately one year in Nigeria.

III. SETTLEMENT AGREEMENT.

The Settlement Notice describes the parties' agreement. The parties state that after the telephone conference with the undersigned, the parties "had another lengthy phone conversation which resulted on both agreeing without any reservation to drop all claims and counter claims and resolve the issue between them." (Settlement Notice.) Respondent agreed to waive storage fees that it contended had accrued for the cargo in return for which Complainant would "pay him back all the physical money he has spent to defend this claim which the Complainant agreed to pay," a sum of $250 receipt of which has been acknowledged. (*Id.*) The parties request that the Commission close this proceeding permanently based on the settlement.

IV. DISCUSSION.

Using language borrowed in part from the Administrative Procedure Act, Rule 91 of the Commission's Rules of Practice and Procedure gives interested parties an opportunity, *inter alia*, to submit offers of settlement "where time, the nature of the proceeding, and the public interest permit." 46 C.F.R. § 502.91(b). "The Commission has consistently adhered to a policy of 'encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid.'" *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002) (*quoting Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978) (*Old Ben Coal*)). *See also Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981).

> The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold

> and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. . . . The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

Old Ben Coal, 18 S.R.R. at 1092 (*quoting* 15A American Jurisprudence, 2d Edition, pp. 777-78 (1976)).

"While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation." *Id.* However, if "a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval." *Old Ben Coal*, 18 S.R.R. at 1093. "[I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement." *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia – New Zealand Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

"Reaching a settlement allows the parties to settle their differences, without an admission of a violation of law by the respondent, when both the complainant and respondent have decided that it would be much cheaper to settle on such terms than to seek to prevail after expensive litigation." *APM Terminals North America, Inc. v. Port Authority of New York and New Jersey*, 31 S.R.R. 623, 626 (FMC 2009) (citing *Puerto Rico Freight Sys. Inc. v. PR Logistics Corp.*, 30 S.R.R. 310, 311 (ALJ 2004)).

There are many factual and legal issues present in the proceeding. Complainant states that he did not have any input into the shipment by water and earlier in this proceeding he stated he did not know whether the equipment had been transported to Nigeria. Respondent claims that the equipment was transported by water from a port or point in the United States to a port or point in Nigeria; therefore, it appears that the Commission has subject matter jurisdiction over the shipment. The burden would be on Complainant to establish that Respondent operated as an ocean transportation intermediary on the shipment, which may be difficult since Complainant did not interact with the carrier. As the record now stands, it is not clear that Respondent performed any acts that would lead to a conclusion that it assumed responsibility for transportation by water or operated as an ocean freight forwarder. Respondent took possession of the cargo with the expectation that

the cargo would be transported by air freight. Although Respondent is not licensed by the Commission as a non-vessel-operating common carrier (NVOCC), it is certified by the TSA to perform this work, functions that seem comparable to those of an NVOCC licensed by the Commission. When shipping by air proved to be too expensive, Respondent arranged for a carrier by water to pick up the equipment and transport it and passed on the $1,330.00 Complainant paid to have it shipped by air. Arguably, the fact that the equipment was delivered to Respondent's storage facility and that Complainant's five pieces of equipment worth $1,681.67 were held there could lead to a conclusion that Respondent assumed responsibility for transportation of the cargo and operated as an NVOCC. If it did act as an NVOCC on the shipment, however, Respondent may have had a maritime lien on the cargo and may have been justified in having kept it until paid its storage fees. *Petra Pet, Inc. (a/k/a Petrapport) v. Panda Logistics Limited; Panda Logistics Co., Ltd. (f/k/a Panda Int'l Transportation Co., Ltd.); and RDM Solutions, Inc.*, FMC No. 11-14 (ALJ Aug. 14, 2012) (*quoting Bernard & Weldcraft Welding Equip. v. Supertrans Int'l, Inc.*, 29 S.R.R. 1348, 1356 n.14 (ALJ 2003), admin. final Feb. 12, 2003), *aff'd* FMC Oct. 31, 2013 (Memorandum Opinion and Order). Liberally construing Respondent's *pro se* answer, *Verucci Motorcycles, LLC v. Senator International Ocean, LLC*, FMC No. 06-05, Order at 6 (ALJ Mar. 22, 2007) (Memorandum and Order on Respondent's Motion to Dismiss for Lack Of Jurisdiction over the Subject Matter and Failure to State a Cause of Action, or in the Alternative a Motion for Summary Judgment), Respondent may have a counterclaim for those fees. (Answer at 1 ¶ 4.)

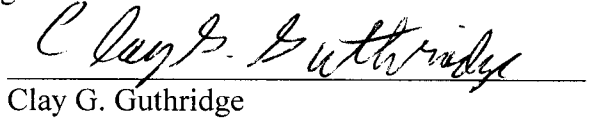
A review of the record reveals no reason to disapprove the Settlement Agreement. The proposed Settlement Agreement lacks any indicia of fraud, duress, undue influence, or mistake and appears to reflect an arms-length resolution of the proceeding by these two *pro se* parties. The terms of the Settlement Agreement appear to be fair, reasonable, and adequate. As stated above, there are a number of factual and legal issues present on this record. The parties appear to have balanced the likelihood of success on the merits against the cost and complexity of proceeding to final judgment, and there is no evidence to the contrary. The parties have weighed their respective chances of success against the cost of achieving such success and entered into terms that reflect such risk. Such calculations are common and promote efficient use of adjudicatory resources. Therefore, I approve the settlement.

ORDER

Upon consideration of the proposed Settlement Notice and the record herein, and for the reasons stated above, it is hereby

ORDERED that the Settlement Notice be **APPROVED**. It is

FURTHER ORDERED that this proceeding be **DISCONTINUED**.



Clay G. Guthridge
Administrative Law Judge